

# COMMITTEE REPORT

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## MADAM PRESIDENT:

The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 19, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1       Page 1, between the enacting clause and line 1, begin a new  
2 paragraph and insert:  
3       "SECTION 1. IC 6-2.5-4-16 IS ADDED TO THE INDIANA CODE  
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
5 1, 2008]: **Sec. 16. (a) This section applies to transactions occurring**  
6 **after June 30, 2008.**  
7       **(b) A person is a retail merchant making a retail transaction**  
8 **when the person:**  
9           **(1) leases an aircraft to another person; and**  
10          **(2) provides flight instruction services to the lessee during the**  
11          **term of the lease.**  
12       **(c) The amount of the gross retail income attributable to a retail**  
13 **transaction described in subsection (b) is the amount charged by**  
14 **the lessor for the lease of the aircraft used in conjunction with the**  
15 **flight instruction services provided to the lessee.**  
16       SECTION 2. IC 6-2.5-6-1, AS AMENDED BY P.L.211-2007,  
17 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
18 JANUARY 1, 2009]: **Sec. 1. (a) Except as otherwise provided in this**  
19 **section, each person liable for collecting the state gross retail or use tax**  
20 **shall file a return for each calendar month and pay the state gross retail**  
21 **and use taxes that the person collects during that month. A person shall**

file the person's return for a particular month with the department and make the person's tax payment for that month to the department not more than thirty (30) days after the end of that month, if that person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year did not exceed one thousand dollars (\$1,000). If a person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year exceeded one thousand dollars (\$1,000), that person shall file the person's return for a particular month and make the person's tax payment for that month to the department not more than twenty (20) days after the end of that month.

(b) If a person files a combined sales and withholding tax report and either this section or IC 6-3-4-8.1 requires sales or withholding tax reports to be filed and remittances to be made within twenty (20) days after the end of each month, then the person shall file the combined report and remit the sales and withholding taxes due within twenty (20) days after the end of each month.

(c) Instead of the twelve (12) monthly reporting periods required by subsection (a), the department may permit a person to divide a year into a different number of reporting periods. The return and payment for each reporting period is due not more than twenty (20) days after the end of the period.

(d) Instead of the reporting periods required under subsection (a), the department may permit a retail merchant to report and pay the merchant's state gross retail and use taxes for a period covering

(1) a calendar year, if the retail merchant's ~~average monthly~~ state gross retail and use tax liability in the previous calendar year does not exceed ~~ten dollars (\$10)~~;

(2) a calendar half year, if the retail merchant's average monthly state gross retail and use tax liability in the previous calendar year does not exceed twenty-five dollars (\$25); or

(3) a calendar quarter, if the retail merchant's average monthly state gross retail and use tax liability in the previous calendar year does not exceed seventy-five dollars (\$75);

**one thousand dollars (\$1,000).** A retail merchant using a reporting period allowed under this subsection must file the merchant's return and pay the merchant's tax for a reporting period not later than the last day of the month immediately following the close of that reporting period.

(e) If a retail merchant reports the merchant's adjusted gross income tax, or the tax the merchant pays in place of the adjusted gross income

tax, over a fiscal year ~~or fiscal quarter~~ not corresponding to the calendar year, ~~or calendar quarter~~; the merchant may, without prior departmental approval, report and pay the merchant's state gross retail and use taxes over the merchant's fiscal ~~period~~ year that corresponds to the calendar ~~period~~ year the merchant is permitted to use under subsection (d). However, the department may, at any time, require the retail merchant to stop using the fiscal reporting period.

(f) If a retail merchant files a combined sales and withholding tax report, the reporting period for the combined report is the shortest period required under:

- (1) this section;
- (2) IC 6-3-4-8; or
- (3) IC 6-3-4-8.1.

(g) If the department determines that a person's:

- (1) estimated monthly gross retail and use tax liability for the current year; or
- (2) average monthly gross retail and use tax liability for the preceding year;

exceeds five thousand dollars (\$5,000), the person shall pay the monthly gross retail and use taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

~~(h) If a person's gross retail and use tax payment is made by electronic funds transfer, the taxpayer is not required to file a monthly gross retail and use tax return. However, the person shall file a quarterly gross retail and use tax return before the twentieth day after the end of each calendar quarter.~~

~~(i)~~ (h) A person:

- (1) who has voluntarily registered as a seller under the Streamlined Sales and Use Tax Agreement;
- (2) who is not a Model 1, Model 2, or Model 3 seller (as defined in the Streamlined Sales and Use Tax Agreement); and
- (3) whose liability for collections of state gross retail and use taxes under this section for the preceding calendar year as determined by the department does not exceed one thousand dollars (\$1,000);

is not required to file a monthly gross retail and use tax return.

SECTION 3. IC 6-2.5-6-9, AS AMENDED BY P.L.162-2006, SECTION 23, AND AS AMENDED BY P.L.184-2006, SECTION 2, IS CORRECTED AND AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2008]: Sec. 9. (a) In determining the amount of state gross retail and use taxes which a retail merchant must remit under section 7 of this chapter, the retail merchant shall, subject to subsections (c) and (d), deduct from the retail merchant's gross retail income from retail transactions made during a particular reporting period, an amount equal to the retail merchant's receivables which:

- (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser;
- (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and
- (3) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code during the particular reporting period.

(b) If a retail merchant deducts a receivable under subsection (a) and subsequently collects all or part of that receivable, then the retail merchant shall, subject to subsection ~~(d)(6)~~, **(d)(7)**, include the amount collected as part of the retail merchant's gross retail income from retail transactions for the particular reporting period in which the retail merchant makes the collection.

(c) This subsection applies only to retail transactions occurring after ~~June 30, 2007~~. *December 31, 2006*. As used in this subsection, "affiliated group" means any combination of the following:

- (1) An affiliated group within the meaning provided in Section 1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%).
- (2) Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in subdivision (1), as determined under the rules adopted by the department.

The right to a deduction under this section is not assignable to an individual or entity that is not part of the same affiliated group as the assignor.

(d) The following provisions apply to a deduction for a receivable treated as uncollectible debt under subsection (a):

- (1) A purchaser of accounts receivable that become uncollectible during a taxable year is entitled to a deduction based on the price paid for the receivables but not on their face value.**

- 1           ~~(1)~~ **(2)** The deduction does not include interest.
- 2           ~~(2)~~ **(3)** The amount of the deduction shall be determined in the
- 3           manner provided by Section 166 of the Internal Revenue Code for
- 4           bad debts but shall be adjusted to exclude:
- 5               (A) financing charges or interest;
- 6               (B) sales or use taxes charged on the purchase price;
- 7               (C) uncollectible amounts on property that remain in the
- 8               possession of the seller until the full purchase price is paid;
- 9               (D) expenses incurred in attempting to collect any debt; and
- 10              (E) repossessed property.
- 11           ~~(3)~~ **(4)** The deduction shall be claimed on the return for the period
- 12           during which the receivable is written off as uncollectible in the
- 13           claimant's books and records and is eligible to be deducted for
- 14           federal income tax purposes. For purposes of this subdivision, a
- 15           claimant who is not required to file federal income tax returns
- 16           may deduct an uncollectible receivable on a return filed for the
- 17           period in which the receivable is written off as uncollectible in the
- 18           claimant's books and records and would be eligible for a bad debt
- 19           deduction for federal income tax purposes if the claimant were
- 20           required to file a federal income tax return.
- 21           ~~(4)~~ **(5)** If the amount of uncollectible receivables claimed as a
- 22           deduction by a retail merchant for a particular reporting period
- 23           exceeds the amount of the retail merchant's taxable sales for that
- 24           reporting period, the retail merchant may file a refund claim
- 25           under IC 6-8.1-9. However, the deadline for the refund claim shall
- 26           be measured from the due date of the return for the reporting
- 27           period on which the deduction for the uncollectible receivables
- 28           could first be claimed.
- 29           ~~(5)~~ **(6)** If a retail merchant's filing responsibilities have been
- 30           assumed by a certified service provider (as defined in
- 31           IC 6-2.5-11-2), the certified service provider may claim, on behalf
- 32           of the retail merchant, any deduction or refund for uncollectible
- 33           receivables provided by this section. The certified service
- 34           provider must credit or refund the full amount of any deduction
- 35           or refund received to the retail merchant.
- 36           ~~(6)~~ **(7)** For purposes of reporting a payment received on a
- 37           previously claimed uncollectible receivable, any payments made
- 38           on a debt or account shall be applied first proportionally to the
- 39           taxable price of the property and the state gross retail tax or use
- 40           tax thereon, and secondly to interest, service charges, and any
- 41           other charges.
- 42           ~~(7)~~ **(8)** A retail merchant claiming a deduction for an uncollectible

receivable may allocate that receivable among the states that are members of the streamlined sales and use tax agreement if the books and records of the retail merchant support that allocation.

SECTION 4. IC 6-3-3-12, AS AMENDED BY P.L.211-2007, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 12. (a) As used in this section, "account" has the meaning set forth in IC 21-9-2-2.

(b) As used in this section, "account beneficiary" has the meaning set forth in IC 21-9-2-3.

(c) As used in this section, "account owner" has the meaning set forth in IC 21-9-2-4.

(d) As used in this section, "college choice 529 education savings plan" refers to a college choice 529 investment plan established under IC 21-9.

(e) As used in this section, "nonqualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is not a qualified withdrawal.

(f) As used in this section, "qualified higher education expenses" has the meaning set forth in IC 21-9-2-19.5.

(g) As used in this section, "qualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is made:

(1) to pay for qualified higher education expenses, excluding any withdrawals or distributions used to pay for qualified higher education expenses if the withdrawals or distributions are made from an account of a college choice 529 education savings plan that is terminated within twelve (12) months after the account is opened;

(2) as a result of the death or disability of an account beneficiary;

(3) because an account beneficiary received a scholarship that paid for all or part of the qualified higher education expenses of the account beneficiary, to the extent that the withdrawal or distribution does not exceed the amount of the scholarship; or

(4) by a college choice 529 education savings plan as the result of a transfer of funds by a college choice 529 education savings plan from one (1) third party custodian to another.

A qualified withdrawal does not include a rollover distribution or transfer of assets from a college choice 529 education savings plan to any other qualified tuition program under Section 529 of the Internal Revenue Code that is not a college choice 529 education savings plan.

(h) As used in this section, "taxpayer" means:

(1) an individual filing a single return; or

1 (2) a married couple filing a joint return.

2 (i) A taxpayer is entitled to a credit against the taxpayer's adjusted  
3 gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable  
4 year equal to the least of the following:

5 (1) Twenty percent (20%) of the amount of the total contributions  
6 made by the taxpayer to an account or accounts of a college  
7 choice 529 education savings plan during the taxable year.

8 (2) One thousand dollars (\$1,000).

9 (3) The amount of the taxpayer's adjusted gross income tax  
10 imposed by IC 6-3-1 through IC 6-3-7 for the taxable year,  
11 reduced by the sum of all credits (as determined without regard to  
12 this section) allowed by IC 6-3-1 through IC 6-3-7.

13 (j) A taxpayer is not entitled to a carryback, carryover, or refund of  
14 an unused credit.

15 (k) A taxpayer may not sell, assign, convey, or otherwise transfer the  
16 tax credit provided by this section.

17 (l) To receive the credit provided by this section, a taxpayer must  
18 claim the credit on the taxpayer's annual state tax return or returns in  
19 the manner prescribed by the department. The taxpayer shall submit to  
20 the department all information that the department determines is  
21 necessary for the calculation of the credit provided by this section.

22 (m) An account owner of an account of a college choice 529  
23 education savings plan must repay all or a part of the credit in a taxable  
24 year in which any nonqualified withdrawal is made from the account.  
25 The amount the taxpayer must repay is equal to the lesser of:

26 (1) twenty percent (20%) of the total amount of nonqualified  
27 withdrawals made during the taxable year from the account; or

28 (2) the excess of:

29 (A) the cumulative amount of all credits provided by this  
30 section that are claimed by any taxpayer with respect to the  
31 taxpayer's contributions to the account for all prior taxable  
32 years beginning on or after January 1, 2007; over

33 (B) the cumulative amount of repayments paid by the account  
34 owner under this subsection for all prior taxable years  
35 beginning on or after January 1, 2008.

36 (n) Any required repayment under subsection (m) shall be reported  
37 by the account owner on the account owner's annual state income tax  
38 return for any taxable year in which a nonqualified withdrawal is made.

39 **(o) A nonresident account owner who is not required to file an**  
40 **annual income tax return for a taxable year in which a**  
41 **nonqualified withdrawal is made shall make any required**  
42 **repayment on the form required under IC 6-3-4-1(2). If the**

**nonresident account owner does not make the required repayment, the department shall issue a demand notice in accordance with IC 6-8.1-5-1.**

~~(o)~~ **(p)** The executive director of the Indiana education savings authority shall submit or cause to be submitted to the department a copy of all information returns or statements issued to account owners, account beneficiaries, and other taxpayers for each taxable year with respect to:

(1) nonqualified withdrawals made from accounts of a college choice 529 education savings plan for the taxable year; or

(2) account closings for the taxable year.

SECTION 5. IC 6-3-4-1.5, AS ADDED BY P.L.211-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 1.5. **(a) Except as provided by subsection (b), if a professional preparer files more than one hundred (100) returns in a calendar year for persons described in section 1(1) or 1(2) of this chapter, in the immediately following calendar year the professional preparer shall file returns for persons described in section 1(1) or 1(2) of this chapter in an electronic format specified by the department.**

**(b) A professional preparer described in subsection (a) is not required to file a return in an electronic format if:**

**(1) the taxpayer or taxpayer's spouse claims the additional exemption for the elderly under IC 6-3-1-3.5(a)(4)(B); and**

**(2) the taxpayer requests in writing that the return not be filed in an electronic format.**

**Returns filed by a professional preparer under this subsection shall not be used in determining the professional preparer's requirement to file returns in an electronic format.**

**(c) A professional preparer who does not comply with subsection (a) is subject to a penalty of fifty dollars (\$50) for each return not filed in an electronic format, with a maximum penalty of twenty-five thousand dollars (\$25,000) per calendar year."**

Page 8, delete lines 15 through 27, begin a new paragraph and insert:

"SECTION 9. IC 6-3-4-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. **(a) For individual income tax returns filed after December 31, 2010, the department shall develop procedures to implement a system of crosschecks between:**

**(1) employer WH-3 forms (annual withholding tax reports) with accompanying W-2s; and**

**(2) individual taxpayer W-2 forms.**



**(b) The department and the office of management and budget shall develop reports and procedures to ensure that income taxes imposed under IC 6-3.5 are accurately and properly distributed to each county."**

Page 8, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 10. IC 6-3.1-21-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 6. (a) **Except as provided by subsection (b)**, an individual who is eligible for an earned income tax credit under Section 32 of the Internal Revenue Code is eligible for a credit under this chapter equal to six percent (6%) of the amount of the federal earned income tax credit that the individual:

(1) is eligible to receive in the taxable year; and

(2) claimed for the taxable year;

under Section 32 of the Internal Revenue Code.

**(b) In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the amount of the credit is equal to the product of:**

**(1) the amount determined under subsection (a); multiplied by**

**(2) the quotient of the taxpayer's income taxable in Indiana divided by the taxpayer's total income.**

~~(b)~~ (c) If the credit amount exceeds the taxpayer's adjusted gross income tax liability for the taxable year, the excess, less any advance payments of the credit made by the taxpayer's employer under IC 6-3-4-8 that reduce the excess, shall be refunded to the taxpayer."

Page 10, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 15. IC 6-5.5-1-2, AS AMENDED BY P.L.223-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 2. (a) Except as provided in subsections (b) through (d), "adjusted gross income" means taxable income as defined in Section 63 of the Internal Revenue Code, adjusted as follows:

(1) Add the following amounts:

(A) An amount equal to a deduction allowed or allowable under Section 166, Section 585, or Section 593 of the Internal Revenue Code.

(B) An amount equal to a deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(C) An amount equal to a deduction or deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by a state of the United States or levied at the local level by any subdivision of a state of the United States.

(D) The amount of interest excluded under Section 103 of the

Internal Revenue Code or under any other federal law, minus the associated expenses disallowed in the computation of taxable income under Section 265 of the Internal Revenue Code.

(E) An amount equal to the deduction allowed under Section 172 or 1212 of the Internal Revenue Code for net operating losses or net capital losses.

(F) For a taxpayer that is not a large bank (as defined in Section 585(c)(2) of the Internal Revenue Code), an amount equal to the recovery of a debt, or part of a debt, that becomes worthless to the extent a deduction was allowed from gross income in a prior taxable year under Section 166(a) of the Internal Revenue Code.

(G) Add the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(H) Add the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).

(I) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

**(J) Add an amount equal to a deduction for dividends paid (as defined in Section 561 of the Internal Revenue Code) to shareholders of a captive real estate investment trust (as defined in section 21 of this chapter).**

(2) Subtract the following amounts:

(A) Income that the United States Constitution or any statute of the United States prohibits from being used to measure the

- 1 tax imposed by this chapter.
- 2 (B) Income that is derived from sources outside the United
- 3 States, as defined by the Internal Revenue Code.
- 4 (C) An amount equal to a debt or part of a debt that becomes
- 5 worthless, as permitted under Section 166(a) of the Internal
- 6 Revenue Code.
- 7 (D) An amount equal to any bad debt reserves that are
- 8 included in federal income because of accounting method
- 9 changes required by Section 585(c)(3)(A) or Section 593 of
- 10 the Internal Revenue Code.
- 11 (E) The amount necessary to make the adjusted gross income
- 12 of any taxpayer that owns property for which bonus
- 13 depreciation was allowed in the current taxable year or in an
- 14 earlier taxable year equal to the amount of adjusted gross
- 15 income that would have been computed had an election not
- 16 been made under Section 168(k) of the Internal Revenue Code
- 17 to apply bonus depreciation.
- 18 (F) The amount necessary to make the adjusted gross income
- 19 of any taxpayer that placed Section 179 property (as defined
- 20 in Section 179 of the Internal Revenue Code) in service in the
- 21 current taxable year or in an earlier taxable year equal to the
- 22 amount of adjusted gross income that would have been
- 23 computed had an election for federal income tax purposes not
- 24 been made for the year in which the property was placed in
- 25 service to take deductions under Section 179 of the Internal
- 26 Revenue Code in a total amount exceeding twenty-five
- 27 thousand dollars (\$25,000).
- 28 (G) Income that is:
  - 29 (i) exempt from taxation under IC 6-3-2-21.7; and
  - 30 (ii) included in the taxpayer's taxable income under the
  - 31 Internal Revenue Code.
- 32 (b) In the case of a credit union, "adjusted gross income" for a
- 33 taxable year means the total transfers to undivided earnings minus
- 34 dividends for that taxable year after statutory reserves are set aside
- 35 under IC 28-7-1-24.
- 36 (c) In the case of an investment company, "adjusted gross income"
- 37 means the company's federal taxable income multiplied by the quotient
- 38 of:
  - 39 (1) the aggregate of the gross payments collected by the company
  - 40 during the taxable year from old and new business upon
  - 41 investment contracts issued by the company and held by residents
  - 42 of Indiana; divided by

(2) the total amount of gross payments collected during the taxable year by the company from the business upon investment contracts issued by the company and held by persons residing within Indiana and elsewhere.

(d) As used in subsection (c), "investment company" means a person, copartnership, association, limited liability company, or corporation, whether domestic or foreign, that:

(1) is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.); and

(2) solicits or receives a payment to be made to itself and issues in exchange for the payment:

(A) a so-called bond;

(B) a share;

(C) a coupon;

(D) a certificate of membership;

(E) an agreement;

(F) a pretended agreement; or

(G) other evidences of obligation;

entitling the holder to anything of value at some future date, if the gross payments received by the company during the taxable year on outstanding investment contracts, plus interest and dividends earned on those contracts (by prorating the interest and dividends earned on investment contracts by the same proportion that certificate reserves (as defined by the Investment Company Act of 1940) is to the company's total assets) is at least fifty percent (50%) of the company's gross payments upon investment contracts plus gross income from all other sources except dividends from subsidiaries for the taxable year. The term "investment contract" means an instrument listed in clauses (A) through (G).

SECTION 16.IC 6-5.5-1-21 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 21. (a) Except as provided in subsection (b), "captive real estate investment trust" means a corporation, a trust, or an association:**

**(1) that is considered a real estate investment trust for the taxable year under Section 856 of the Internal Revenue Code;**

**(2) that is not regularly traded on an established securities market; and**

**(3) in which more than fifty percent (50%) of the:**

**(A) voting power;**

**(B) beneficial interests; or**

1           **(C) shares;**  
 2           **are owned or controlled, directly or constructively, by a single**  
 3           **entity that is subject to Subchapter C of Chapter 1 of the**  
 4           **Internal Revenue Code.**

5           **(b) The term does not include a corporation, a trust, or an**  
 6           **association in which more than fifty percent (50%) of the entity's**  
 7           **voting power, beneficial interests, or shares are owned by a single**  
 8           **entity described in subsection (a)(3) that is owned or controlled,**  
 9           **directly or constructively, by:**

10           **(1) a corporation, a trust, or an association that is considered**  
 11           **a real estate investment trust under Section 856 of the**  
 12           **Internal Revenue Code;**

13           **(2) a person exempt from taxation under Section 501 of the**  
 14           **Internal Revenue Code; or**

15           **(3) a real estate investment trust that:**

16           **(A) is intended to become regularly traded on an**  
 17           **established securities market; and**

18           **(B) satisfies the requirements of Section 856(a)(5) and**  
 19           **856(a)(6) of the Internal Revenue Code under Section**  
 20           **856(h) of the Internal Revenue Code.**

21           **(c) For purposes of this section, the constructive ownership rules**  
 22           **of Section 318 of the Internal Revenue Code, as modified by**  
 23           **Section 856(d)(5) of the Internal Revenue Code, apply to the**  
 24           **determination of the ownership of stock, assets, or net profits of**  
 25           **any person.**

26           SECTION 17. IC 6-7-1-17, AS AMENDED BY P.L.218-2007,  
 27           SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28           JULY 1, 2008]: Sec. 17. (a) Distributors who hold certificates and  
 29           retailers shall be agents of the state in the collection of the taxes  
 30           imposed by this chapter and the amount of the tax levied, assessed, and  
 31           imposed by this chapter on cigarettes sold, exchanged, bartered,  
 32           furnished, given away, or otherwise disposed of by distributors or to  
 33           retailers. Distributors who hold certificates shall be agents of the  
 34           department to affix the required stamps and shall be entitled to  
 35           purchase the stamps from the department at a discount of one and  
 36           two-tenths cents (\$0.012) per individual package of cigarettes as  
 37           compensation for their labor and expense.

38           (b) The department may permit distributors who hold certificates  
 39           and who are admitted to do business in Indiana to pay for revenue  
 40           stamps within thirty (30) days after the date of purchase. However, the  
 41           privilege is extended upon the express condition that:

42           (1) except as provided in subsection (c), a bond or letter of credit

satisfactory to the department, in an amount not less than the sales price of the stamps, is filed with the department; ~~and~~

(2) proof of payment is made of all ~~total~~ property taxes, state income, ~~and~~ excise taxes, **and listed taxes (as defined in IC 6-8.1-1-1)** for which any such distributor may be liable; **and**  
 (3) **payment for the revenue stamps must be made by electronic funds transfer (as defined in IC 4-8.1-2-7).**

The bond or letter of credit, conditioned to secure payment for the stamps, shall be executed by the distributor as principal and by a corporation duly authorized to engage in business as a surety company or financial institution in Indiana.

(c) If a distributor has at least five (5) consecutive years of good credit standing with the state, the distributor shall not be required to post a bond or letter of credit under subsection (b).

SECTION 18. IC 6-8.1-7-1, AS AMENDED BY P.L.219-2007, SECTION 92, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) This subsection does not apply to the disclosure of information concerning a conviction on a tax evasion charge. Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, terms of a settlement agreement executed between a taxpayer and the department, investigation records, investigation reports, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to:

- (1) members and employees of the department;
- (2) the governor;
- (3) the attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes; or
- (4) any authorized officers of the United States;

when it is agreed that the information is to be confidential and to be used solely for official purposes.

(b) The information described in subsection (a) may be revealed upon the receipt of a certified request of any designated officer of the state tax department of any other state, district, territory, or possession of the United States when:

- (1) the state, district, territory, or possession permits the exchange of like information with the taxing officials of the state; and
- (2) it is agreed that the information is to be confidential and to be used solely for tax collection purposes.

(c) The information described in subsection (a) relating to a person on public welfare or a person who has made application for public welfare may be revealed to the director of the division of family resources, and to any director of a county office of family and children located in Indiana, upon receipt of a written request from either director for the information. The information shall be treated as confidential by the directors. In addition, the information described in subsection (a) relating to a person who has been designated as an absent parent by the state Title IV-D agency shall be made available to the state Title IV-D agency upon request. The information shall be subject to the information safeguarding provisions of the state and federal Title IV-D programs.

(d) The name, address, Social Security number, and place of employment relating to any individual who is delinquent in paying educational loans owed to a postsecondary educational institution may be revealed to that institution if it provides proof to the department that the individual is delinquent in paying for educational loans. This information shall be provided free of charge to approved postsecondary educational institutions (as defined by IC 21-7-13-6(a)). The department shall establish fees that all other institutions must pay to the department to obtain information under this subsection. However, these fees may not exceed the department's administrative costs in providing the information to the institution.

(e) The information described in subsection (a) relating to reports submitted under IC 6-6-1.1-502 concerning the number of gallons of gasoline sold by a distributor and IC 6-6-2.5 concerning the number of gallons of special fuel sold by a supplier and the number of gallons of special fuel exported by a licensed exporter or imported by a licensed transporter may be released by the commissioner upon receipt of a written request for the information.

(f) The information described in subsection (a) may be revealed upon the receipt of a written request from the administrative head of a state agency of Indiana when:

- (1) the state agency shows an official need for the information; and
- (2) the administrative head of the state agency agrees that any information released will be kept confidential and will be used solely for official purposes.

**(g) The information described in subsection (a) may be revealed upon the receipt of a written request from the chief law enforcement officer of a state or local law enforcement agency in Indiana, when it is agreed that the information is to be confidential**

1 **and to be used solely for official purposes.**

2 ~~(g)~~ **(h)** The name and address of retail merchants, including  
3 township, as specified in IC 6-2.5-8-1(j) may be released solely for tax  
4 collection purposes to township assessors and county assessors.

5 ~~(h)~~ **(i)** The department shall notify the appropriate innkeepers' tax  
6 board, bureau, or commission that a taxpayer is delinquent in remitting  
7 innkeepers' taxes under IC 6-9.

8 ~~(i)~~ **(j)** All information relating to the delinquency or evasion of the  
9 motor vehicle excise tax may be disclosed to the bureau of motor  
10 vehicles in Indiana and may be disclosed to another state, if the  
11 information is disclosed for the purpose of the enforcement and  
12 collection of the taxes imposed by IC 6-6-5.

13 ~~(j)~~ **(k)** All information relating to the delinquency or evasion of  
14 commercial vehicle excise taxes payable to the bureau of motor  
15 vehicles in Indiana may be disclosed to the bureau and may be  
16 disclosed to another state, if the information is disclosed for the  
17 purpose of the enforcement and collection of the taxes imposed by  
18 IC 6-6-5.5.

19 ~~(k)~~ **(l)** All information relating to the delinquency or evasion of  
20 commercial vehicle excise taxes payable under the International  
21 Registration Plan may be disclosed to another state, if the information  
22 is disclosed for the purpose of the enforcement and collection of the  
23 taxes imposed by IC 6-6-5.5.

24 ~~(l)~~ **(m)** This section does not apply to:

- 25 (1) the beer excise tax (IC 7.1-4-2);
- 26 (2) the liquor excise tax (IC 7.1-4-3);
- 27 (3) the wine excise tax (IC 7.1-4-4);
- 28 (4) the hard cider excise tax (IC 7.1-4-4.5);
- 29 (5) the malt excise tax (IC 7.1-4-5);
- 30 (6) the motor vehicle excise tax (IC 6-6-5);
- 31 (7) the commercial vehicle excise tax (IC 6-6-5.5); and
- 32 (8) the fees under IC 13-23.

33 ~~(m)~~ **(n)** The name and business address of retail merchants within  
34 each county that sell tobacco products may be released to the division  
35 of mental health and addiction and the alcohol and tobacco commission  
36 solely for the purpose of the list prepared under IC 6-2.5-6-14.2.

37 SECTION 19. IC 6-8.1-10-3.5 IS ADDED TO THE INDIANA  
38 CODE AS A NEW SECTION TO READ AS FOLLOWS  
39 [EFFECTIVE JANUARY 1, 2009]: **Sec. 3.5. If a person fails to file**  
40 **a return on or before the due date as required by IC 6-3-4-1(1) or**  
41 **IC 6-3-4-1(2), where no remittance is due with the return, the**  
42 **person is subject to a penalty of ten dollars (\$10) per day for each**



day that the return is past due, up to a maximum of five hundred dollars (\$500).

SECTION 20. IC 6-8.1-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) If a person makes a tax payment with a check, **credit card, debit card, or electronic funds transfer**, and the department is unable to obtain payment on the check, **credit card, debit card, or electronic funds transfer** for its full face amount when the check, **credit card, debit card, or electronic funds transfer** is presented for payment through normal banking channels, a penalty of ten percent (10%) of the unpaid tax or the ~~face~~ value of the check, **credit card, debit card, or electronic funds transfer**, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check, **credit card, debit card, or electronic funds transfer** was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the ten (10) day period, the penalty is increased to one hundred percent (100%) multiplied by the ~~face~~ value of the check, **credit card, debit card, or electronic funds transfer**, or the unpaid tax, whichever is smaller.

(c) If the person subject to the penalty under this section can show that there is reasonable cause for the check, **credit card, debit card, or electronic funds transfer** not being honored, the department may waive the penalty imposed under this section."

Page 10, after line 37, begin a new paragraph and insert:

"SECTION 22. [EFFECTIVE JANUARY 1, 2009] **IC 6-2.5-6-1, as amended by this act, applies to reporting periods beginning after December 31, 2008.**

SECTION 23. [EFFECTIVE JULY 1, 2008] **IC 6-2.5-6-9, as amended by this act, is intended to be a clarification of the law and not a substantive change in the law.**

SECTION 24. [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)] **IC 6-3-3-12, as amended by this act, applies to taxable years beginning after December 31, 2007.**

SECTION 25. [EFFECTIVE JANUARY 1, 2009] **IC 6-3-4-1.5, as amended by this act, applies to adjusted gross income tax returns filed after December 31, 2008.**

SECTION 26. [EFFECTIVE JANUARY 1, 2009] **IC 6-3.1-21-6 and IC 6-5.5-1-2, both as amended by this act, and IC 6-5.5-1-21 and IC 6-8.1-10-3.5, both as added by this act, apply to taxable years beginning after December 31, 2008.**

- 1        **SECTION 27. An emergency is declared for this act."**
- 2        Renumber all SECTIONS consecutively.  
      (Reference is to SB 19 as introduced.)

**and when so amended that said bill do pass .**

Committee Vote: Yeas 10, Nays 0.

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**Senator Kenley, Chairperson**